

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JASON MEADOWS #249032,

Petitioner,

Case No. 2:11-cv-14

v.

Honorable R. Allan Edgar

JOHN A. M. FERGUSON, et al.,

Respondents.

_____ /

REPORT AND RECOMMENDATION

Petitioner Jason Meadows filed this petition for writ of habeas corpus, asserting that he is being illegally detained while awaiting trial on charges of malicious prosecution in the Antrim County Circuit Court.

Promptly after the filing of a petition for habeas corpus, the court must undertake a preliminary review of the petition to determine whether “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, RULES GOVERNING § 2254 CASES; *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. Rule 4; *see Allen v Perini*, 424 F.2d 134, 141 (6th Cir.), *cert. denied*, 400 U.S. 906 (1970) (district court has the duty to “screen out” petitions that lack merit on their face). After undertaking the review required by Rule 4, the undersigned recommends that Petitioner’s application for habeas corpus relief be dismissed with prejudice.

A state prisoner seeking post-conviction relief from a federal court has but one remedy: an application for a writ of habeas corpus. All such applications for writs of habeas corpus

are governed by 28 U.S.C. § 2241, which generally authorizes federal courts to grant the writ – to both federal and state prisoners. Most state prisoners’ applications for writs of habeas corpus are subject also to the additional restrictions of 28 U.S.C. § 2254. That is, if a state prisoner is ‘in custody pursuant to the judgment of a State court,’ his petition is subject to § 2254. If, however, a prisoner is in prison pursuant to something other than a judgment of a state court, e.g., a pre-trial bond order, then his petition is not subject to § 2254.” *Medberry v. Crosby*, 351 F.3d 1049, 1062 (11th Cir. 2003). *But see McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 811 (10th Cir. 1997) (allowing state prisoners to proceed under § 2241 when attacking the execution of their sentences, in contrast to § 2254 (like § 2255), which are used to attack the validity of a conviction and sentence), *cited in Medberry*, 2003 WL 22784246, at * 11 n.8. Therefore, the court will construe petitioner’s action as one filed pursuant to 28 U.S.C. § 2241.

As noted above, petitioner appears to be seeking to have this court intervene in a pending state court proceeding. In the opinion of the undersigned, this Court should abstain from addressing Petitioner's claims under the principles enunciated in *Younger v. Harris*, 401 U.S. 37 (1971). In *Younger*, the Supreme Court has held that absent extraordinary circumstances, federal equity jurisdiction may not be used to enjoin pending state prosecutions. The *Younger* abstention doctrine is based on the principle that the states have a special interest in enforcing their own laws in their own courts. (*Id.* at 44.) The rule is “designed to permit state courts to try state cases free from interference by federal courts, particularly where the party to the federal case may fully litigate his claim before the state court.” *Zalman v. Armstrong*, 802 F.2d 199, 205 (6th Cir. 1986) (internal quotations omitted). Abstention in favor of state court proceedings is proper where there exists: (1) an ongoing state proceeding; (2) an important state interest; and (3) an adequate opportunity in the

state judicial proceedings to raise constitutional challenges. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, (1982); *Fieger v. Thomas*, 74 F.3d 740, 744 (6th Cir. 1996).

The three factors that support Younger abstention are present in this case. First, there is no dispute that there was an ongoing state judicial proceeding when Petitioner filed his complaint. Second, state criminal proceedings involve important state interests. *See, e.g., Cooper v. Parrish*, 203 F.3d 937, 954 (6th Cir. 2000). Third, the state court proceedings provide an adequate opportunity to raise constitutional challenges. Nothing prevents Petitioner from presenting his federal claims in the pending state court proceedings. If petitioner does so, and the trial court denies or otherwise fails to consider his constitutional claims, he may exercise his right to an appeal under Michigan law.

Abstention is therefore appropriate in the absence of one of three exceptions to the Younger abstention doctrine in which: (1) “the state proceeding is motivated by a desire to harass or is conducted in bad faith,” *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611; (2) “the challenged statute is flagrantly and patently violative of express constitutional prohibitions,” *Moore v. Sims*, 442 U.S. 415, 424 (1979) (quoting *Huffman*, 420 U.S. at 611); or, (3) there is “an extraordinarily pressing need for immediate federal equitable relief.” *Kugler v. Helfant*, 421 U.S. 117, 125 (1975). These exceptions have been interpreted narrowly. *Zalman v. Armstrong*, 802 F.2d 199, 205 (6th Cir. 1986). In order to overcome the bar of *Younger* abstention, petitioner must do more than set forth mere allegations of bad faith or harassment. *Amanatullah v. Colorado Board of Medical Examiners*, 187 F.3d 1160, 1165 (10th Cir. 1999) (citing *Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997).

In this case, petitioner fails to do anything more than make conclusory assertions of bad faith and harassment. Therefore, the undersigned recommends dismissal of petitioner's action.

In addition, if petitioner should choose to appeal this action, I recommend that a certificate of appealability be denied as to each issue raised by Petitioner in this application for habeas corpus relief. Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A dismissal of Petitioner's action under Rule 4 of the Rules Governing § 2254 Cases is a determination that the habeas action, on its face, lacks sufficient merit to warrant service. It would be highly unlikely for this court to grant a certificate, thus indicating to the Sixth Circuit Court of Appeals that an issue merits review, if the court has already determined that the action is so lacking in merit that service is not warranted. *See Love v. Butler*, 952 F.2d 10 (1st Cir. 1991) (it is "somewhat anomalous" for the court to summarily dismiss under Rule 4 and grant a certificate); *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990) (requiring reversal where court summarily dismissed under Rule 4 but granted certificate); *Dory v. Commissioner of Correction of the State of New York*, 865 F.2d 44, 46 (2d Cir. 1989) (it was "intrinsically contradictory" to grant a certificate when habeas action does not warrant service under Rule 4); *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983) (issuing certificate would be inconsistent with a summary dismissal).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. Aug. 27, 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* Each issue must be considered under the standards set forth by the

Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. Aug. 27, 2001). Consequently, the undersigned has examined each of Petitioner's claims under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of petitioner's claims. *Id.*

The Court finds that reasonable jurists could not find that this Court's dismissal of each of Petitioner's action as being barred by the Younger abstention doctrine was debatable or wrong. Therefore, the undersigned recommends that petitioner be denied a certificate of appealability.

/s/ Timothy P. Greeley

TIMOTHY P. GREELEY

UNITED STATES MAGISTRATE JUDGE

Dated: May 13, 2011

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within 14 days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to file timely objections may constitute a waiver of any further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); see *Thomas v. Arn*, 474 U.S. 140 (1985).